REMARKS

1. General Matters

1.1. The specification has been amended to perfect the claim of domestic priority under 35 USC 119(e). Foreign priority is also claimed, but there is no legal requirement that it be set forth in the specification.

1.2. The Examiner is reminded that if a generic claim is deemed allowable, the species restriction must be reconsidered.

1.3. The finality of the office action is considered improper for the reasons set forth in the request to withdraw finality filed January 27, 2004. Briefly stated, the enablement rejection could have been made earlier. It is unfortunate that the PTO has not acted on this request, even after almost five months since it was filed.

2. Prior Art Issues

The prior action set forth four prior art rejections: (1) anticipation by Ashmead, (2) anticipation by Polak, (3) anticipation by obviousness over Balkus and (4) anticipation by Huzinec. Only the Ashmead (vs. claims 14, 15, 18, 25, 28-30, 35) and Huzinec (vs. claims 14, 18, 19, 25, 28 and 29) rejections have been maintained.

2.1. Ashmead

The reference describes several compositions, among which are compositions of EDTA, sodium tripolyphosphate and carboxymethylcellulose. The function of the carboxymethylcellulose is described at col. 3, lines 4-18. The carboxymethylcellulose is not used to encapsulate the EDTA, in fact it is stated in col. 3, lines 51-52 that the ingredients are blended together, and further in col. 3, line 59, that they may be dosed in the form of capsules or tablets. Thus, the reference does not disclose a zeolite encapsulated in a cellulose.

Furthermore, zeolite is not mentioned in the reference at all.

Therefore the present invention is not anticipated by Ashmead, nor obvious in view of Ashmead.

2.2. Huzinec et al.

The reference describes a comestible product having extended release of additives. It is described in the Background of the reference, that "..Encapsulation of additives such as flavors and sweeteners is time-consuming and expensive. In addition, the encapsulation process and parameters can change the character of the flavor...." Accordingly, Huzinec et al. teaches against encapsulation. Furthermore, there is no description of encapsulated zeolite products in the reference.

The Examiner refer's to col. 2, lines 16-18, however the Examiner is erring in reading the text. The reference discusses the carrier for use in the comestible product. The carrier may be selected from a cellulose, zeolites, aluminum silicates, carbon black and mixtures thereof. There is no indication in Huzinec, that both cellulose and zeolites are present at the same time, in fact they are mentioned as alternatives to each other.

Thus, Huzinec et al. does not describe a zeolite coated with a cellulose, and therefore the claims are not anticipated by Huzinec et al.

2.3. Conclusion

Since none of the prior art references disclose a composition of a zeolite encapsulated in a cellulose claim 14 and claims depending therefrom are novel.

Furthermore, none of the references hint at a composition

as defined in claim 14, and therefore, claim 14 is non-obvious in view of the references.

3. Enablement Issues

The Examiner has withdrawn the enablement rejection because the prior art allegedly demonstrates encapsulation as interpreted by the Examiner. Since we traversed the prior art rejections, we have chosen to comment upon the enablement rejection presented December 28, 2003, although it was withdrawn March 1.

Substantively the issue is whether a person skilled in the art would understand how to encapsulate as required by claim 14.

Page 7, line 20 to page 8, line 2 taught

> To prevent degradation of the compound before reaching the suitable place of action in the gastro-intestinal tract the compound according to the invention may be in encapsulated form. The compounds which are used in the above compositions may be encapsulated by any appropriate encapsulating material. In specific embodiments of the invention, a useful compound for the encapsulation is a compound selected from the group consisting of a fat, a non-calcium derivative of a fat such as a soap and a stearate, a protein, a polysaccharide, a cellulose and a derivative of any such compound, a gum, a glycol and gelatine.
>
> In an interesting embodiment, the composition according to the invention comprises compounds which are encapsulated by a calcium-free membrane material, which at the body temperature of the lactating animal is solid at a pH value above 4.0 but which under these conditions dissolves at pH below 4.0. It is contemplated that compounds encapsulated in such a membrane material can be transported through the rumen of a ruminant without being dissolved, and thus is not dissolved until it arrives in the gastrointestinal system after passage of the forestomachs of the ruminant.

Thus, we explicitly taught the members of the Markush group of claim 14, as well as the "calcium-free" limitation. We do not understand how this can be considered an inadequate teaching. We do not need to use the claimed invention in our examples. See In re Strahilevitz, 212 USPQ 561 (CCPA 1982).

Respectfully submitted,

BROWDY AND NEIMARK, P.L.L.C.
Attorneys for Applicant

By: _____
Iver P. Cooper
Reg. No. 28,005

624 Ninth Street, N.W.
Washington, D.C. 20001
Telephone: (202) 628-5197
Facsimile: (202) 737-3528
IPC:lms
G:\ipc\g-i\hoib\Jorgensen2\pto second amendaftfinal.wpd